

910 KAR 2:060. Guardianship Trust Fund.

RELATES TO: KRS Chapter 13B, 210.290, 387.010(6), 387.510(15), 387.760

STATUTORY AUTHORITY: 194A.050(1), 387.760(2)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 210.290(4)-(6), the Cabinet for Health and Family Services is authorized to establish a guardianship trust fund that may be used for the benefit of individuals under state guardianship who are indigent. This administrative regulation establishes procedures used by the cabinet to provide public notice of any funds remaining after expenses are paid following the death of an individual under state guardianship who has an estate of less than ten thousand dollars (\$10,000) of personal property or money and the process for claiming that property. This administrative regulation establishes the procedures used for any funds that remain unclaimed after the expiration of one (1) year to escheat to the guardianship trust fund and how the guardianship trust fund may be utilized.

Section 1. Definitions. (1) "Applicant" or "Claimant" means the person who has applied to receive unclaimed personal property or funds of a deceased ward listed on the registry.

(2) "Beneficiary" means an individual or entity that has been identified as a recipient of the estate pursuant to the order of a probate court in this or any other state.

(3) "Cabinet" means the Cabinet for Health and Family Services.

(4) "Department" means the Department for Aging and Independent Living.

(5) "Guardianship trust fund" or "trust" means the guardianship trust fund established by KRS 210.290(4)-(6).

(6) "Guardianship unclaimed funds registry" or "registry" means the registry maintained by the department to post unclaimed funds of a deceased ward.

(7) "Heir" means a legal relative, limited to a spouse, parent, child, or sibling of the deceased appointee.

(8) "Individual under guardianship" means a ward of the state as defined by KRS 387.010(6).

Section 2. Public Notice of Remaining Funds. (1) Upon the death of an individual under guardianship who has less than \$10,000 in personal property or funds, the department shall pay, in priority order, the following:

(a) Funeral expenses:

1. If not prepaid; and
2. If not covered by life insurance;

(b) Outstanding bills related to living expenses including:

1. Rent to a landlord; and
2. Utility companies; and

(c) Medicaid estate recovery owed.

(2) Funds remaining after expenses listed in Subsection 1(a) – (c) of this section shall be listed on the registry for a period of one (1) year from the date posted.

(3) The registry shall be maintained on the department's website and shall include:

- (a) Name of deceased individual under guardianship;
- (b) Year of birth;
- (c) Date of death;
- (d) Last known city of residence;
- (e) Date notice is posted on the registry;
- (f) The date the notice expires;

- (g) If the amount or value remaining in the estate is more or less than \$100; and
- (h) The account number.

Section 3. Notice of Registry for Claiming Funds. The cabinet may utilize public announcements, interagency agreements, and announcements to creditors associations, including funeral homes and nursing home associations, in order to provide notice to the public of the registry.

Section 4. Filing a Claim for Funds as a Creditor, Heir, or Beneficiary.

(1) The cabinet shall make available on its website the:

(a) "GUF-1 Guardianship Unclaimed Funds Registry Claim Form - Creditor" for any creditor; and

(b) "GUF-2 Guardianship Unclaimed Funds Registry Claim Form - Individual" for any heir or beneficiary of the deceased ward.

(2) All claims shall be submitted by mail. No claim shall be accepted in person, by fax, or by email.

(3) The cabinet shall review all claims received no later than thirty (30) days of the expiration of one (1) year after the public notice of estate funds is listed. Funds shall not be released prior to the expiration of the one (1) year period for filing claims.

(4) Creditors shall have first preference to receive payment from the estate in order as set forth in KRS 210.290(4)(b).

(5) A beneficiary of the estate shall submit a "GUF-2 Guardianship Unclaimed Funds Registry Claim Form - Individual", and the following documentation:

(a) A copy of the will of the deceased individual under guardianship;

(b) A verified copy of an order of a probate court that the beneficiary is entitled to the funds or personal property, or is the administrator or executor of the deceased's estate; and

(c) A copy of the applicant's driver's license or identification card as proof of identity.

(6) An heir of the estate shall submit a "GUF-2 Guardianship Unclaimed Funds Registry Claim Form - Individual", and the following documentation:

(a) A copy of the applicant's driver's license or identification card as proof of identity; and

(b) 1. If a spouse, a copy of the marriage certificate;

2. If a sibling or child of the deceased individual under guardianship, a copy of the applicant's birth certificate; or

3. If a parent of the deceased individual under guardianship, a copy of the deceased's birth certificate.

(7) A creditor, other than Medicaid Estate Recovery Program, of the deceased individual under guardianship shall submit a "GUF-1 Guardianship Unclaimed Funds Registry Claim Form - Creditor", and the following documentation:

(a) An affidavit setting out the relationship to the deceased, the services provided, and the amount owed; and

(b) An itemized copy of the statement of charges owed, a description of the service provided, and dates of service.

(8) Medicaid Estate Recovery Program may file a claim by providing the notice required by 907 KAR 1:585.

(9) All claims submitted within one (1) year of the public notice of a deceased individual under guardianship's funds shall be:

(a) Processed; and

(b) Paid, if valid.

(10) Any remaining funds of the ward shall escheat to the guardianship trust fund.

Section 5. Informal Dispute Resolution and Appeal of Determination Regarding Claim.

(1) Any person or entity aggrieved over a determination by the department regarding a claim may file an informal dispute resolution, which shall be received by the department within fifteen (15) calendar days of the date on the written decision letter.

(2) The request for informal dispute resolution shall be in writing and mailed to the commissioner of the department.

(3) The informal dispute resolution shall include the following information:

(a) Name, address, and telephone number of the claimant;

(b) Justification for the dispute;

(c) Documentation supporting the dispute; and

(d) Signature of person requesting the informal dispute resolution.

(4) The commissioner, or his or her designee, may:

(a) Hold an informal dispute resolution meeting to consider the sufficiency of the claim; and

(b) Provide an opportunity for the claimant to appear to present facts or concerns about the claim.

(5) A complete record of the informal dispute resolution meeting shall be kept for three (3) years. The claimant shall be notified of the determination, including the reason, and the right to appeal, in writing within ten (10) business days.

(6) A claimant dissatisfied with the determination of the informal dispute resolution may request an administrative hearing be conducted in accordance with KRS Chapter 13B.

(7) The request for administrative hearing shall be received:

(a) Within thirty (30) calendar days from the date on the letter providing the decision of the informal dispute resolution;

(b) In writing; and

(c) To the Office of the Ombudsman and Administrative Review, Quality Advancement Branch, 275 E. Main Street, 2 E-O, Frankfort, Kentucky 40621.

Section 6. Matters not Appealable: An administrative hearing shall not be conducted if:

(1) The applicant has submitted a claim for funds within one (1) year of the date public notice is posted on the registry.

(2) The applicant has failed to submit a request for administrative hearing within the thirty (30) day time period.

(3) The applicant has failed to produce the documentation required by this administrative regulation when submitting a claim for funds.

(4) The applicant is not an heir as defined by Section 1(7) of this administrative regulation.

Section 7. Guardianship Trust Fund: Investments and Disbursements.

(1) The cabinet may establish the trust with a bank, taking into consideration the location of the bank and if the bank has an established trust division.

(2) The cabinet shall be trustee and shall invest in the funds as authorized by KRS 210.290(5).

(3) Funds may be utilized from the trust for banking fees and charges and for the cost of personnel needed within the department to maintain the registry and process disbursements. All other funds of the trust shall be utilized for the needs of indigent individuals under guardianship of the cabinet.

(4) The trust may accept donations and conduct fundraising functions.

(5) Disbursements from the trust may be authorized by the commissioner of the department or by his or her designee in accordance with subsection (7) of this section.

(6) Requests for disbursements from the trust for an individual under guardianship may be made by any employee of the department or by an individual under guardianship.

(7) The following disbursements may be authorized to the extent funds are available in the trust:

(a) Temporary housing costs not to exceed the cost of housing for two (2) months for an individual under guardianship:

1. With no housing;

2. Who has received an eviction notice; or

3. Who is the victim of abuse, neglect, or exploitation and due to the circumstance is no longer able to safely remain in their current living environment and has no access to alternative living arrangements;

(b) Medical supplies, medication, or medical transportation that are not covered by Medicaid or another insurance plan;

(c) Emergency personal needs including clothing or food;

(d) The reasonable cost of burial or cremation:

1. For an individual under guardianship at least six (6) months prior to death; and

2. Not to exceed \$5,000, for an individual under guardianship who has no:

a. Burial plan or life insurance;

b. Family able to cover the cost in full; or

c. The county of death has no fund for indigent burials; or

(e) Expenses necessary to ensure the health, safety, and well-being if no other funds are available or accessible in a timely manner.

Section 8. Right of Reimbursement of the Trust. (1) The trust shall have the right of reimbursement from an individual under guardianship.

(2) The trust shall be reimbursed as follows by the individual under guardianship:

(a) 1. Funds received are in excess of the individual under guardianship's cost of living expenses; or

2. Other funding sources are obtained to cover the individual's cost of living expenses and allow for repayment to the trust; and

(b) No other debts are owed by the individual under guardianship for living expenses.

Section 9. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "GUF-1 Guardianship Unclaimed Funds Registry Claim Form - Creditor" edition 7/2020; and

(b) "GUF-2 Guardianship Unclaimed Funds Registry Claim Form - Individual" edition 7/2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (11 Ky.R. 317; Am. 557; eff. 10-9-1984; 13 Ky.R. 670; eff. 11-11-1986; 16 Ky.R. 1230; eff. 2-3-1990; 20 Ky.R. 1658; 2615; eff. 3-14-1994; 39 Ky.R. 521; 1655; 1997; eff. 3-4-2013; 40 Ky.R. 1130; 1393; eff. 1-15-2014; 42 Ky.R. 2800; 43 Ky.R. 12; eff. 7-20-2016; 47 Ky.R. 1165, 1591; eff. 2-11-2021.)